



UTAH COMMISSION ON
CRIMINAL & JUVENILE JUSTICE



Utah
Sentencing
Commission

Preliminary Hearings

Context and Next Steps

5-18-2022

Utah Preliminary Hearings Over Time

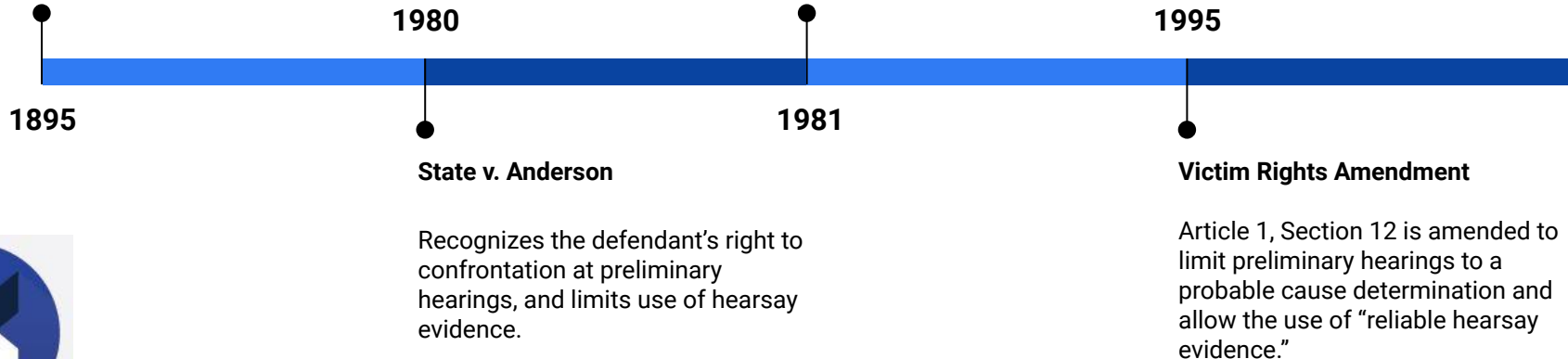
Utah Constitution Ratified

Article 13 lays out a process for charging criminal cases by Information reviewed by a Magistrate, unless waived by the defendant - source of the preliminary hearing.

Also a limited grand jury process

State v. Brooks

Allows use of preliminary hearing testimony at trial if witnesses are unavailable, because the confrontation rights and motivations at preliminary hearing are so similar to those at trial.



Utah Preliminary Hearings Over Time

Utah Rule of Evidence 1102

Defines “reliable hearsay” to include all prior hearsay exceptions and exemptions, other technical and foundational evidence, and written statements under oath or affirmation

State v. Hernandez

Expands preliminary hearing rights to Class A misdemeanors. .

Utah was the first state to find a constitutional right to preliminary hearings for misdemeanors.

2009

2011

2017

State v. Timmerman

Found that the 1995 Amendment removed preliminary hearings from the constraints of the confrontation clause.

“The purpose of the preliminary hearing is to ferret out groundless claims”

State v. Goins

Restricts state’s ability to use preliminary hearing testimony at trial.



Other States and Federal Processes

Different jurisdictions take different approaches to balancing the interests at stake.

- ▶ The federal government requires grand juries for all felony cases and does not use preliminary hearings;
- ▶ 23 states require grand juries for certain serious offenses, while using Informations / Preliminary hearings for charging less serious offenses;
- ▶ 25 states have optional grand juries, which are generally used less frequently than Informations/Preliminary hearings;
- ▶ Two states (Connecticut and Pennsylvania) have abolished grand juries for criminal indictments.



Other States and Federal Processes

Different jurisdictions take different approaches to balancing the interests at stake.

- ▶ Four states grant a statutory right to preliminary hearings for some misdemeanor offenses;
- ▶ Pennsylvania recently held that the state may not rely *exclusively* on hearsay evidence to establish its prima facie case. It can be used to establish “any element” but not “all elements” of the offense.
- ▶ Many states have relaxed rules of evidence at preliminary hearings, but the specific rules vary.





“The application of the various protections embodied in Section 12 to the several stages of a criminal prosecution is defined by the relationship between the specific proceedings and the protection offered by the procedural safeguard.” - State v. Anderson



Balancing Interests

Defendant's Rights:

Due Process

Discovery

Ferreting out
meritless claims

Victim Rights:

“Dignity, respect,
courtesy, and
sensitivity”

“No less vigorous
than protections
afforded criminal
defendants”

Procedural / Resource constraints:

Courts and prosecution
resources

Taxpayer burden





“None of us is as smart as all of us.” - Kenneth H. Blanchard



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